

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
KENNETH R. MITCHELL and)	Case No. 98-30407
HEIDI S. MITCHELL,)	
)	MEMORANDUM OF
DECISION)	AND ORDER
)	
Debtors.)	
_____)	

HONORABLE TERRY L. MYERS, U.S. BANKRUPTCY JUDGE

Kenneth L. Anderson, Lewiston, Idaho, for Debtors.

Richard J. Hayden, Coeur d'Alene, Idaho, for Washington State Employees Credit Union.

C. Barry Zimmerman, Coeur d'Alene, Idaho, Trustee.

The confirmation hearing for these chapter 13¹ Debtors' amended plan was held March 2, 1999. Washington State Employees Credit Union ("WSECU") objected to the amended plan. The Debtors argue that WSECU should not be able to object to the amended plan. The Court took the issue under advisement and resolves it in favor of WSECU.

¹ Unless otherwise indicated, all references to "code," "title," "chapter" and "section" are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1330, and all references to "rule" are to the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P.") 1001 - 9036. References to "LBR" are to the Local Bankruptcy Rules for this District.

BACKGROUND

The chapter 13 Debtors, Kenneth and Heidi Mitchell, filed their petition for relief on September 18, 1998.² They filed their proposed plan on the same date. For that reason, under LBR 2002.5, an “accelerated confirmation procedure” commenced. Debtors alluded to this procedure within their plan’s introductory paragraph:

A creditor who wishes to oppose the plan may do so by timely filing an objection to the plan. Any objection must be in writing and must be filed with the court and served upon the debtor, debtor’s attorney, and the Chapter 13 trustee by the time set by the court for the first meeting of creditors, within five (5) days thereafter, or as otherwise allowed by law.³

This plan provided the following treatment for secured creditor WSECU:

(b) PROVISIONS FOR CREDITORS HOLDING SECURED CLAIMS.

(1) **Modification of rights of holders of secured claim.** To each of the following named creditors, the full value of the allowed secured claim held, provided a timely allowed claim is filed. Any portion of the debt owed to a creditor in excess of the allowed value of the collateral will be treated in this plan as an unsecured claim. Each creditor holding an allowed secured claim shall retain its lien on the collateral securing that claim until the *allowed secured value* has been paid, at which time the lien shall be

² The petition raises an issue as to whether this case was filed in the proper venue. 28 U.S.C. § 1408(1). However, as this chapter 13 appears close to final resolution on the merits, and as no party has moved to transfer the case, the Court has decided to proceed with determination of the matters taken under advisement. This decision does not, however, limit the Court’s ability to later address this issue.

³ This is consistent with the recommended model chapter 13 plan adopted in this District under General Order No. 146 (October 1, 1998).

released. The *allowed secured value* is defined as the lesser of the amount of a creditor's claim or the market value of the creditor's collateral, as set forth in this plan. The *allowed secured value* shall be amortized at the rate of interest (simple interest, direct reducing), in equal monthly payments over the term of the plan, unless otherwise provided. No pre-confirmation interest shall be paid unless otherwise provided. Upon payment of the allowed value of the secured claim, the secured creditor's lien shall be released, void of any further effect, including void of any further security interest. Any portion of the debt owed to a creditor in excess of the allowed value of the collateral will be treated in this plan as an unsecured claim. Unless otherwise ordered by the court, payment shall commence upon filing of an allowable claim and pursuant to the terms of the Order of Confirmation of the plan. The *Projected Total Payments* constitute the debtor's best estimate of the total of all payments made to the secured creditor on the secured portion of such creditor's claims. At the discretion of the trustee, allowed secured values of \$500 or less may have payment accelerated.

Secured creditor rights and claims will be modified in accordance with the values and terms provided for hereinafter by debtor. An order valuing the secured portion of a claim, at less than the total amount of the claim, voids the creditor's lien to the extent of the unsecured portion of the claim.

The debtor hereby MOVES the court for an order so fixing the value of the collateral as follows.

Name of Creditor	Description of Collateral*	Allowed Secured Value	Rate of Interest	Total Payments
WSECU*	93 Nissan	\$2,900	10.0%	\$ 3,368.69
WSECU*	96 Nissan	\$8,225	10.0%	\$ 9,554.24

*Washington State Employees Credit Union

**"MPP", if present, means "miscellaneous personal property"

If a secured creditor objects to this provision, debtor will nevertheless ask the court, at the hearing on confirmation, to confirm the plan over such creditor's objection, pursuant to 11 U.S.C. 1325(a)(5)(B). In the event that any such secured creditor fails to timely file a secured claim, a late-filed claim shall be allowed for purposes of distributing payments for the secured portion of its claim. In the event that such creditor may have an unsecured portion in its proof of claim, no distribution shall be allowed for the unsecured portion of the claim.

Plan at para. (b)(1), pp. 3-4.

A notice of the commencement of the case, bar dates and the § 341 meeting (i.e., the "first meeting notice") was served on all creditors on October 1, 1998, along with a copy of the plan. WSECU was served at P.O. Box 1324 in Olympia, Washington, and at P.O. Box 34107 in Seattle, Washington.

The first meeting notice in this case did not establish or recite a deadline for objections to confirmation of the plan, though it did provide notice of the November 3 first meeting date, the December 15 confirmation hearing date, and the February 1, 1999 claim bar date.

No creditors appeared at the first meeting on November 3. No objections to confirmation were filed by that date or within 5 days thereafter. LBR 2002.5(b). However, the Trustee recommended denial of confirmation because the plan failed to fully comply with the Code.⁴

Due to the Trustee's objection, the plan was not "automatically confirmed," LBR 2002.5(c), but came on for confirmation hearing on December 15, 1998, as scheduled. LBR 2002.5(e). No creditors were present at that hearing, and no objections had been filed. However, the Trustee still resisted confirmation.⁵ At this hearing, the Debtors' counsel asked that confirmation be denied, and the Court so ordered.

⁴ Trustee's Recommendations on Confirmation of the Plan, filed November 5, 1998.

⁵ Trustee's Findings and Recommendations, filed December 14, 1998.

On January 27, 1999, the Debtors filed amended schedules I and J, and an amended plan. This plan's term was extended to 42 months from the original plan's 36 months. The treatment of WSECU was changed slightly, essentially reflecting a slightly higher total payment due to the additional six months of interest accrual.

The amended plan was served by the Debtors on all creditors along with a "Motion to Confirm Amended Chapter 13 Plan Dated 26 January 1999 and Notice of Hearing" advising all creditors that an amended plan had been filed, that hearing on confirmation would occur on March 2, and informing creditors that "[i]f any party plans to appear at the hearing and contest this motion, such party should file a formal objection to the motion and give due notice of such intent to the undersigned counsel to avoid delay in the litigation." Service on WSECU was made by mail at the same addresses above noted.⁶

On February 26, WSECU filed an objection to confirmation of the amended plan. Debtors ask the Court to summarily overrule the objection on the ground that it is "untimely" and, Debtors assert, barred under the LBR's. The Court took that issue under advisement.⁷

DISCUSSION

The streamlined confirmation process governed by LBR 2002.3 and 2002.5, together with the suggested model plan adopted by General Order 146, are designed to move cases quickly toward confirmation with minimal litigation, costs or expense in all chapter 13 cases where there are no disputed issues, or relatively few easily resolvable issues. It is not, and has never been, designed to replace the otherwise applicable provisions of the code and rules where a quick, uncontested confirmation is not possible. The Advisory Committee Notes to LBR 2002.5 state:

⁶ Effectiveness of service is supported by the fact that WSECU listed the Seattle address in its proof of claim.

⁷ All other pending matters in the case were continued for further hearing on April 22; some are dependent upon the Court's resolution of Debtors' argument regarding the timeliness of WSECU's objection.

The process of confirmation as structured under this rule is designed to protect interests of objecting creditors while allowing accelerated confirmation of plans and payment to creditors in the large majority of chapter 13 cases where there are no objections or where objections can be readily resolved. The notice and timing requirements under the Federal Rules of Bankruptcy Procedure make the accelerated confirmation process appropriate only in those cases where the plan is filed with the petition and the clerk is able to issue notice. In all other cases, the debtor must file the plan within 15 days of the petition, See F.R.B.P. 3015(b), and provide copies of the plan and notice of confirmation hearing to all creditors and parties in interest, in compliance with Federal Rules of Bankruptcy Procedure 2002 and 3015, and these local rules.

Here, LBR 2002.5 was implicated since the plan was filed with the petition. *Compare* LBR 2002.3(a)(2). No objection was filed within five days of the first meeting, and no creditors raised concerns at the first meeting. Had the Trustee not raised his own concerns, the plan might well have been confirmed without hearing.

But here, not only did the Trustee force the plan to its scheduled hearing on December 15, the Debtors appeared through counsel at that hearing and asked the Court to deny confirmation, and thereafter filed a new plan and a new notice of hearing. As noted above, this notice invited objection prior to the new hearing.

Once accelerated confirmation was no longer relevant, Rule 3015(f)⁸ would allow an objection at any time prior to hearing. WSECU's objection was filed four days before the confirmation hearing, thus it is timely. Under the circumstances in this case, the Court concludes that WSECU is not barred from making an objection to the amended plan because LBR 2002.5 is no longer operative and Rule 3015(f) allows objection before confirmation.⁹

⁸ In part, Rule 3015(f) provides that “[a]n objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan.”

⁹ The Court also declines to adopt an approach to this issue requiring, as a precondition to entertaining the creditor's objection, an evaluation of whether (or

CONCLUSION AND ORDER

The Debtors' request to summarily overrule WSECU's objection is DENIED for the reasons set forth. The objection of WSECU, all confirmation issues, and any related matters properly filed and noticed in accord with the code and rules shall be heard on April 22, 1999, at 10:00 a.m. in the Court's courtroom, Federal Building and U.S. Courthouse, 220 E. 5th Street, Moscow, Idaho.

Dated this 17th day of March, 1999.

to what degree) the amended plan changed the treatment of the creditor's claim from the earlier unopposed plan.